In the High Court of Judicature at Madras

Dated: 31.7.2007

Coram:

The Honourable Mr.Justice F.M.Ibrahim Kalifulla
and
The Honourable Mr.Justice S.Tamilvanan

W.P.No.21130 of 2002
& W.P.M.P.No.29221 of 2002

Union of India rep. by
1. The Senior Superintendent of Post Offices,
Virudhunagar Division,
Virudhunagar 626 001.

2. The Asst. Superintendent of Post Offices,
Rajapalayam Sub-Division,
Rajapalayam-626 117. .. Petitioners

vs.

1. Central Administrative Tribunal,
Chennai Bench, rep. by the Registrar,
High Court Campus, Chennai-104.

2. A.Muniyandi
3. A.Sembulingam .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the proceedings of the first respondent dated 4.5.2001 made in O.A.No.1062 of 2000 and quash the same.

For petitioners : Mr.V.Balasubramanian,
Standing Counsel for Central Government
For respondents 2 and 3 : No appearance

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ORDER

(The Order of the Court was made by F.M.Ibrahim Kalifulla,J)

Though the respondents 2 and 3 were duly served, they have not chosen to appear either in person or through counsel. We therefore proceeded to decide the Writ Petition on merits, upon hearing the learned Standing Counsel appearing for the petitioners.

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2. The Postal Department is the petitioner herein. The challenge in this Writ Petition is to the order of the Central Administrative Tribunal passed in O.A.No.1062 of 2000, dated 4.5.2001.

3. The issue relates to the validity of the appointment made to the post of Extra-Departmental Sub-Postmaster (i.e. for short, EDSPM) for Krishnapuram EDSO, Rajapalayam, Virudhunagar District, in a temporary vacancy.

4. One Thiru.V.Muthaiah was a permanent EDSPM of Krishnapuram EDSO. He was proceeded against by way of disciplinary action for having committed fraud in RD Accounts and he was placed under off-duty with effect from 22.1.1999. Therefore, a temporary vacancy arose in the said post. Before going in for a recruitment to fill up the temporary vacancy, the second respondent was nominated for appointment to the said post on provisional basis with effect from 22.1.1999. Thereafter, applications were called for on 11.6.1999 and one Thiru.R.Ramkumar got selected and appointed, by order dated 30.9.1999. However, since there were petitions against the selection of Thiru.R.Ramkumar, his appointment was cancelled and the second respondent was again provisionally appointed with effect from 24.4.2000. Thereafter, the petitioners are stated to have called for applications from the Employment Exchange and since there was no sponsorship made by the Employment Exchange, they went in for a regular selection to fill up the temporary vacancy. The petitioners would claim that pursuant to their Notification, 45 candidates filed applications including the second respondent herein, of whom, only 40 candidates attended for verification of the documents and in that selection, the third respondent got selected on merits, as he had secured more marks in SSLC than the second respondent herein. In other words, the third respondent was found more meritorious than the second respondent to hold the temporary vacancy which arose due to off-duty ordered against the permanent holder of the post, namely Thiru.V.Muthaiah. The third respondent was appointed to the said post on temporary vacancy, by order of appointment dated 11.9.2000.

5. Challenging the said appointment of the third respondent, the second respondent herein preferred Original Application No.1062 of 2000 before the Central Administrative Tribunal. The second respondent herein contended that himself, having been appointed on provisional basis to the post of EDSPM of Krishnapuram EDSO and having allowed him to function for quite some time, the selection and appointment of the third respondent herein ought not to have been made.

6. The said Original Application was resisted by the petitioners by contending that even for filling up of the post based on temporary vacancy, the procedure prescribed for regular appointment has to be followed, that such a procedure was duly followed in the case of filling up of the temporary vacancy of EDSPM, Krishnapuram EDSO in which the third respondent was found more meritorious by virtue of higher marks secured by

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him in the SSLC than the second respondent herein as well as the third respondent satisfying the qualification of possessing the landed property.

7. The Tribunal however proceeded on the footing that one provisional appointment cannot be replaced by another provisional appointment. On that sole ground, it had interfered with the selection and appointment of the third respondent herein.

8. Heard the learned Standing Counsel appearing for the petitioners.

9. On a perusal of the Original Application preferred by the second respondent herein and the reply affidavit filed before the Tribunal by the petitioners herein, we find that the grievance of the second respondent was not merely on the ground that one provisional appointment was sought to be replaced by another provisional appointment. On the other hand, the grounds raised in the Original Application filed before the Tribunal disclose that the second respondent was very much aware of the fact that the appointment of the third respondent to the post of EDSPM, Krishnapuram EDSO, came to be made by way of regular selection to that post, where the merits and demerits of several applicants including the second respondent herein, who have applied for the post were considered, in which the third respondent herein was found to be a successful candidate possessing better qualification in all respects than all the other candidates including the second respondent herein. In the Original Application, the second respondent/applicant never contended that he was better qualified than the third respondent. On the other hand, it is on record that in the marks scored in the SSLC Examination, as between the second respondent and the third respondent, the marks scored by the third respondent was far high than the second respondent herein. That apart, the reply affidavit of the petitioners filed before the Tribunal discloses that the third respondent also satisfied the other qualification of possessing the landed property, which persuaded the petitioners to select the third respondent for being appointed to the post of EDSPM, Krishnapuram EDSO to fill up the temporary vacancy created due to the off-duty of the permanent incumbent Thiru.V.Muthaiah.

10. In such circumstances, the conclusion of the Tribunal in interfering with the selection and appointment of the third respondent on the ground that the provisional appointment of the second respondent cannot be replaced by another provisional appointment of the third respondent, is not borne out by records, and therefore, the said conclusion in the impugned order of the Tribunal, cannot be sustained. We reiterate that the appointment of the third respondent, dated 11.9.2000, was made as per the relevant Rules relating to the filling up of the post of EDSPM on temporary vacancy and when his appointment was based on merits, the same ought not have been interfered with by the Tribunal.

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11. The order impugned in this Writ Petition is therefore set aside. The Writ Petition stands allowed. No costs. W.P.M.P. is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cs

Copy to

1. The Senior Superintendent of Post Offices,
   Virudhunagar Division,
   Virudhunagar 626 001.

2. The Asst. Superintendent of Post Offices,
   Rajapalayam Sub-Division,
   Rajapalayam-626 117.

3. Central Administrative Tribunal,
   Chennai Bench, rep. by the Registrar,
   High Court Campus, Chennai-104.

+ 1 CC To Mr. V.Balasubramanian Associates, SR NO.47303

W.P.No.21130 of 2002

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